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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/491,304	01/25/2000	Wade J. Walterscheid	12204/04701	8373

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EXAMINER
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THOMAS, ALEXANDER S

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/29/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-9

**Office Action Summary**

Applicant(s)

09/491,304

Applicant(s)

WALTERSCHEID, WADE J.

Examiner

Alexander S. Thomas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 17-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-3,6,8-10,13,15,16,39-43,46,48-51,54 and 56-58 is/are rejected.
- 7) ☒ Claim(s) 4,5,7,11,12,14,44,45,47,52,53 and 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Concerning claim 41, applicant refers to this claim as being canceled, however, applicant has not actually requested that this claim be canceled.
2. Claims 39, 41 and 58 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no original disclosure directed to said fixed portion being substantially rigid or said fixed portion being adapted to cover an opening in the substructure. Clearly cardboard 2 mm thick is not normally considered substantially rigid. Concerning figures 6, 7, 13 and 14, it is not understood how these figures support the language in question. The fixed portions in the figures retain their shape because they are mounted on a substructure.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 6, 9, 10, 13, 39-42, 46, 49, 50, 51, 54 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by each of Bartoli and Sassaman. Applicant's arguments have been considered but are not deemed persuasive. The term "hinge" does not distinguish the instant article over that of the references since it does not define a structural feature of the pad. Therefore the term hinge may be merely a line, imaginary or real, upon which the pad may be folded. Applicant argues that the references articles can be bent at any point, however this does not structurally

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distinguish the instant article from that of the references since the references articles may be considered to have infinite hinging axis's. Concerning claim 40, the phrase "and wherein said first flap is positioned ....." merely defines intended use features and does not further structurally define the instant article over that of the references. Regarding claims 39, 41 and 58, the phrase "substantially rigid" is a relative property possessed by all materials and structures.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 8, 15, 16, 43, 48, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over each of Bartoli et al and Sassaman in view of applicant's acknowledged state of the art. The references disclose the invention substantially as claimed; see Figure 5 and the Abstract of Bartoli et al, and the Figures and column 1, lines 15-60 of Sassaman. However they do not disclose the use of a fastener to attach the article to a substrate. Applicant acknowledges that similar article are known to be attached to substrates via push-type fasteners; see page 1, lines 8-12 of the instant specification. It would have been obvious to one of ordinary skill in the art to use a push-type fastener to attach the article to a substrate as taught by the secondary reference depending on the end use of the prior art article.

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7. Claims 4, 5, 7, 11, 12, 14, 44, 45, 47, 52, 53 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander S. Thomas whose telephone number is 703-308-2421. The examiner can normally be reached on M-F 6:00-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



ALEXANDER S. THOMAS  
PRIMARY EXAMINER

ast  
May 28, 2002